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10/725,090	12/01/2003	Karl-Friedrich Laible	2001P14018WOUS	1756
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JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			TRAN, HANH VAN	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/725,090
Filing Date: December 01, 2003
Appellant(s): LAIBLE, KARL-FRIEDRICH

Mr. Russell W. Warnock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 11, 2006 appealing from the Office action mailed December 01, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,170,391	BOTTGER	10-1979
3,984,223	WHISTLER, Jr.	10-1976

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

a) **Claims 1-2, 4-7, 11, and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by USP 4,170,391 to Bottger.**

Bottger discloses a housing for a refrigerator comprising all the elements recited in the above listed claims including, such as shown in Fig 1, a body defining an interior and having at least one side part formed from a panel of flat material, such as shown in Figs 2 & 4, side walls, a front side with an opening open to the interior, vertical border strips, horizontal bars (16,28), said side part having a joining element, the end bar being introduced into the joining element and subjecting the border strip to a force having an effect of widening an angle at which the border strip is connected to the side wall, (i.e., col.3, lines 31-36, the inner leg 34 and the outer leg 32 of the U-shaped case portion are spaced from each other a distance slightly less than the distance between the inner most portion of the detent tang 58 and the outer surface of the first end 44 of the cross piece support member 28), the end bar having at least two points of contact, such as shown in Fig 3. In regard to claim 11, Bottger meets the limitations recited therein since col.3, lines 31-36, the inner leg 34 and the outer leg 32 of the U-shaped case portion are spaced from each other a distance slightly less than the distance between the inner most portion of the detent tang 58 and the outer surface of the first end 44 of the cross piece support member 28. Thus, when the end bar is inserted into the joining element, it would deflect/rotate the joining element.

b) Claims 3, 8-10, and 12-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bottger in view of USP 3,984,223 to Whistler, Jr..

Bottger discloses all the elements as discussed above except for the end bar having a joint-on buffer body forming at least one of said points of contact, the joining element is rigidly connected to either the border strip or the side wall, the border strip being covered with a colored sheet material, and the side wall being free of a color coating at least in a rear region.

Whistler, Jr. teaches the idea of providing a joint-on buffer body 42 forming at a point of contact, such as shown in Fig 3, for the purpose of increase manufacturing tolerance of the dimensions of the elements. Therefore, it would have been obvious to modify the structure of Bottger by providing a joint-on buffer body forming at least one of said points of contact for the purpose of increase manufacturing tolerance of the dimensions of the elements, as taught by Whistler, Jr., since both teach alternate conventional refrigerator housing, used for the same intended purpose, thereby providing structure as claimed.

In regard to the joining element is rigidly connected to either the border strip or the side wall, it would have been obvious and well within the level of one skill in the art to rigidly connected the joining element to either the border strip or the side wall in order to increase the overall load support of the housing, if so is desired. In regard to the border strip being covered with a colored sheet material, and the sidewall being free of a color coating at least in a rear region, it would have been obvious and well within the level of one skill in the art to have the border strip being covered with a colored sheet

material, and the sidewall being free of a color coating at least in a rear region in order to reduce the overall cost of the refrigerator.

(10) Response to Argument

A) In response to Appellant's arguments regarding 102(b) rejection of claims 1, 2, 4-7, 11 and 14 in view of USP 4,170,391 to Bottger

i) In response to Appellant's argument on page 12 of the Brief that Bottger fails to disclose "the relationship between the border strip of the refrigerator relative to the side part as claimed by Appellant such that an adjoining element is connected to the border strip in a manner to force a widening of an angle at which the border strip is connected to the sidewall", the examiner takes the position that the claimed language fails to provide adequate structural limitations to the claim in order to distinguish Appellant's invention from the prior art of record. Bottger, as stated in the art rejection above of numeral (9) a), clearly meets the claimed limitations.

ii) In response to Appellant's remarks on pages 13-14 that Appellant has recognized the difficulty of maintaining an angle of precisely 90 degrees between the part that form the sidewall of the refrigerator and the part that forms the border strip and that Appellant's joining arrangement subjects the border strip to a force having an effect of widening an angle at which the border strip is connected to the side wall as set forth in claim 1, the examiner again takes the position that the claimed language fails to clearly recite maintaining an angle of precisely 90 degrees between the part that form the sidewall of the refrigerator

and the part that forms the border strip, and fails to provide adequate structural limitation in order to distinguish Appellant's invention from the prior art of record. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

iii) In response to Appellant's argument regarding claims 2, 4, 5-7 and 11, again the examiner takes the position that Bottger meets all the claimed limitations recited in said claims, such as stated in the above art rejection and shown in Figures 2-5 of Bottger.

B) In response to Appellant's arguments regarding 103(a) rejection of claims 3, 8-10, and 12-13 over Bottger in view of USP 3,984,223 to Whistler, Jr.

i) In response to Appellant's argument on page 18 that Whistler, Jr. "merely discloses a refrigerator construction which permits its cabinet shelf outer condenser loop of hot gas...prior to the insertion of a one-piece liner", the examiner takes the position that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Whistler is used for the teaching of providing a joint-on buffer body

forming at a point of contact for the purpose of increase manufacturing tolerance of the dimensions of the refrigerator elements.

ii) In response to Appellant's argument regarding claims 12-13 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Moreover, the examiner takes the position that it is well known in the art to provide the visible walls/parts of a refrigerator with a colored sheet material for aesthetic purpose, and the non-visible walls/parts free of color for cost purpose.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3637

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Lanna Mai

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